

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

STATE OF INDIANA)
)
COUNTY OF MARION)

**CHARLES HINTON, III,
Complainant,**

DOCKET NO. 06652, TIN5-0735

vs.

**BETHLEHEM STEEL CORPORATION,
AND
UNITED STEEL WORKERS OF
AMERICA, LOCAL UNION NO. 6787
Respondent.**

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The undersigned Hearing Officer was appointed to hear the above captioned case and all parties were notified of said appointment by personal service on their attorneys' prior to the commencement of the hearing held on May 25, 1979.

Complainant Charles Hinton, III (hereinafter "Hinton") was present at that hearing and was represented by counsel, Mr. Robert D. Lange and Ms. Patricia E. Pinckney. Respondent Bethlehem Steel Corporation (hereinafter "Bethlehem") was represented by counsel, Mr. Larry G. Evans. Respondent United Steel Workers of America Local Union No. 6787 (hereinafter "Local 6787") was represented by counsel Mr. Larry G. Evans. Respondent United Steel Workers of America, Local Union No. 6787 (hereinafter "Local 6787") was represented by counsel, Mr. David Gore.

Having considered the official record, including the Stipulations of Fact filed by Hinton and Bethlehem and orally joined by Local 6787, the Responses of Hinton and Bethlehem to each others Requests for Admission, the evidence admitted at the

Hearing, the arguments of counsel, the proposed Findings of Fact, Conclusions of Law and Orders filed by each party, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Hinton the Complainant in this action is a Negro.
2. Bethlehem is a Pennsylvania corporation doing business in the State of Indiana a foreign corporation and has at all times related to the pending action, employed six (6) or more employees.
3. Local 6787 have been the sole bargaining agent at Bethlehem's Burns Harbor Plant at all time relevant herein.
4. Hinton was hired by Bethlehem on May 20, 1974 as a Laborer in the Service Division at its Burns Harbor Plant in Chesterton, Indiana.
5. Prior to September 8, 1974, Hinton's employment record at Bethlehem contained no disciplinary warnings or penalties.
6. On September 8, 1974, an incident occurred between Hinton and Mr. Donald J. Kirby (hereinafter "Kirby"), after which Hinton was suspended with intent to discharge.
7. The incident in question was a fight and took place in a large industrial building which was very noisy and which contained overhead cranes.
8. Kirby is a Caucasian and was employed as a Tool Room (or Tool Crib) Attendant.
9. Hinton was ultimately discharged and has not worked for Bethlehem since September 8, 1974.
10. Kirby was also discharged after this incident.
11. At the time of the incident, there was in force at the Bethlehem Steel Corporation, Burns Harbor Plant, a conduct notice which provided in part as follows:

Any employee involved in FIGHTING... shall be subject to immediate discharge.

FIGHTING is any form of physical assault or physical altercation by one employee upon another or between employees.

12. Hinton was aware of the provision of this conduct notice at the time of the incident.
13. There were no witnesses to the start of the fight.
14. The only person to see any part of the fight was sub-foreman Dennis McIntyre who came by after the fight had begun.
15. Hinton and Kirby gave conflicting versions of the way the fight started.
16. Kirby's version of the incident was written on the same day it occurred and reads:

Kept playing his pranks on me so I told him finally he is going to get it if he don't quit. He attacked me so I swung at him with intentions of not hitting him and I didn't but he got mad, came inside the tool crib, (where I am assigned). We both starting fighting by grabbing each other around the neck, then fists then McIntyre came and broke it up.

17. Hinton's version of the incident is summarized as follows:
 - a. While passing the tool room, Hinton was called over by Kirby, who stated that he (Kirby) had been told by another employee that Hinton had thrown water on him (Kirby)) was going to "get" Hinton.
 - b. Hinton denied that he had thrown water on Kirby and stated that he didn't want to hear about it and turned to walk away.

- c. While Hinton was attempting to walk away, Kirby swung at Hinton and hit him (Hinton) in the head. Kirby then grabbed Hinton around the throat. At this point, Hinton gained the "upper hand" so that his arms were around Kirby's chest while he (Hinton) was behind Kirby when McIntyre separated the two.
- 18. A discharge hearing was held by T.H. Lethen, an Assistant Superintendent for Bethlehem, who in a memo dated September 20, 1974, found that he was unable to determine which of two employees had started the fight and recommended that both men be treated equally and be discharged as a result of the incident.
- 19. It is Hinton's position that he should have been treated more favorably than Kirby rather than equally because his version of the incident including his claim that he acted in self defense was more credible than Kirby's and that the failure to credit his version and treat him more favorably was because of his race.
- 20. Since there was no direct proof that the failure to credit Hinton's version was because of his race, Hinton suggests that Kirby's statement that Kirby swung first intending to miss, is unbelievable and should discredit Kirby's version.
- 21. However, listed below are equally persuasive reasons to discredit Hinton's claim of self defense:
 - a. The fight occurred in Kirby's work area.
 - b. Kirby was known as a very quiet employee.
 - c. Hinton was approximately two inches (2") taller than Kirby.
 - d. When Dennis McIntyre first saw the fight, he found Hinton behind Kirby with his arms around Kirby.
 - e. Hinton testified he may have hit Kirby as many as five times.
- 22. Without a witness to the start of the fight, there was insufficient evidence for the Hearing Officer or T.H. Lethen to determine who was the aggressor or to recommend more favorable treatment for Hinton.

23. Mr. James Ondras (hereinafter "Ondras") and Mr. Dennis Piotrowski (hereinafter "Piotrowski"), both employees of Bethlehem in March of 1973, were involved in a fight at about that time. Both Ondras and Piotrowski were suspended with intent to discharge. Ondras filed a timely grievance and was later reinstated. Piotrowski did not file a timely grievance and was not reinstated. Ondras and Piotrowski are Caucasians.
24. The incident involving Piotrowski and Ondras is clearly distinguishable from the incident in question because it was possible to determine that one of the employees was clearly acting in self-defense and that employee was reinstated.
25. Shortly after being suspended, Hinton went to the union hall of Local 6787 where he spoke to assistant griever, Mr. Radford E. "Gene" Moser.
26. When an employee comes to a Local 6787 seeking to file a grievance, the Union official normally asks questions of the employee to determine what provisions, if any, of the collective bargaining agreement Bethlehem should be charged with violating.
27. Hinton complained he should not have been discharged for fighting because he acted in self defense.
28. Hinton did not raise the issue of race.
29. Kirby had also filed a grievance.
30. Local 6787 had no more reason than did T.H. Lethen to suspect race or any other reason besides fighting was involved was involved in the discharge, or to determine that Hinton had acted solely in self defense.
31. Local 6787 appealed Hinton's discharge to Step 3 of the Grievance Procedure and a Step 3 Grievance meeting was held on November 17, 1974.
32. After the Step 3 meeting, the local 6787 determined, based upon previous arbitration decisions in cases in which both parties were aggressors or the aggressor could not be determined, that the grievance would be unsuccessful un arbitration.
33. Local 6787 withdrew Hinton's grievance.
34. Local 6787 made a good faith determination that Hinton's grievance was without merit and could not be won in arbitration.

35. Local 6787 were not required and did not seek Hinton's permission to withdraw the grievance.
36. Because of the absence of an act of unlawful discrimination, Hinton has suffered no damages cognizable under IC 22-9-1.
37. Any Conclusion of Law which should have been deemed to be a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties.
2. The complaint was timely filed.
3. Bethlehem is a "person" as that term is defined in IC 22-9-1-3(a).
4. Bethlehem is an "employer" as that term is defined in IC 22-9-1-3(h).
5. Local 6787 are a "person" as that term is defined in IC 22-9-1-3(a).
6. Local 6787 are a "labor organization" as that term is defined in IC 22-9-1-3(j).
7. Bethlehem did not commit a "discriminatory practice" as that term is defined in IC 22-9-1-3(1) when it treated Hinton and Kirby equally, by suspending both the intent to discharge, since it could not determine who was the instigator of the incident in question.
8. Local 6787 did not commit a "discriminatory practice" as that term is defined in IC 22-9-1-3(1) when it failed to ask any questions of Hinton or undertake any investigation designed to determine whether the clause of the Main Agreement prohibiting racial discrimination had been violated, since it had no reason to suspect such a violation.
9. Local 6787 did not commit a "discriminatory practice" as that term is defined in IC 22-9-1-3(1) when it withdrew Hinton's grievance based on prior arbitration decision in which both parties were the aggressors or the aggressor could not be determined.
10. Any Finding of Fact which should have been deemed to be a Conclusion of Law is hereby adopted as such.

ORDER

The complaint of Complainant, Charles Hinton, III, shall be dismissed for the reasons aforestated.

Dated: July 9, 1979